



Exempt Action Proposed Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	9 VAC 5-240
Secondary action(s)	None
Regulation title	Variance for Open Burning
Action title	Open Burning (Rev. EV)
Document preparation date	March 28, 2007

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4007 M, § 2.2-4013 E, § 2.2-4014 D, and § 2.2-4015 C of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The variance provides relief from the seasonal restrictions in 9 VAC 5-40-5630 A 8 and 10 for the County of Gloucester in the Hampton Roads Volatile Organic Compound Emissions Control Area. The variance would no longer be in effect after December 31, 2008.

The seasonal restrictions apply to the open burning of waste for the:

- Disposal of clean burning construction waste, debris waste, and demolition waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations.
- Disposal of clean burning construction waste, debris waste, and demolition waste on the site of local landfills.

Current practices for debris disposal the County of Gloucester do include open burning, and this variance will allow time for the locality to develop alternatives.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 26, 2007, the State Air Pollution Control Board adopted a variance entitled "Variance for Open Burning" (9 VAC Chapter 240). The variance is to be effective on May 1, 2007.

Legal Authority

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1307 C of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to grant local variances from regulations and issue orders to that effect. Written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the proposed variance and (ii) the variance qualifies as an exemption under § 2.2-4007 M, § 2.2-4013 E, § 2.2-4014 D, and § 2.2-4015 C of the Administrative Process Act is available upon request.

Comparison with Federal Requirements

Please describe the provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

No provisions of the proposed variance are more restrictive than applicable federal requirements.

Localities Particularly Affected

Please provide the identity of any localities particularly affected by the proposed regulation.

The locality particularly affected is the County of Gloucester.

Additional Information

Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, and a copy of any documents to be incorporated by reference are attached.

The text of the proposed variance is attached.

Public Comment

Please summarize all public comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

A summary and analysis of the public testimony, along with the basis for the decision of the Board, is attached.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability, including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this variance will have a direct impact on families. However, there will be positive indirect impacts in that the variance will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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**SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION EV
CONCERNING**

**SEASONAL RESTRICTIONS ON OPEN BURNING
(9 VAC 5 CHAPTER 240)**

INTRODUCTION

At the December 2006 meeting, the board authorized the department to promulgate for public comment a proposed regulation revision concerning seasonal restrictions on open burning.

A public hearing was advertised accordingly and held in Virginia Beach, Virginia on January 19, 2007 and the public comment period closed on February 5, 2007. The proposed regulation subject to the hearing is summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation concerns provisions covering seasonal restrictions on open burning. A summary of the regulation follows:

1. For the purposes of applicability of the seasonal restrictions in 9 VAC 5-40-5630 A 8 and 10 only, the Hampton Roads Volatile Organic Compound Emissions Control Area does not include the County of Gloucester and the County of Isle of Wight.
2. The variance shall not be applicable after December 31, 2008.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Virginia Beach, Virginia on January 19, 2007. Three persons attended the hearing, one of whom offered testimony, and two additional written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about December 19, 2007 in the Virginian-Pilot and in the Virginia Register. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT**: Seasonal burning variance in Gloucester County.

COMMENTER: Gloucester County

TEXT: The Gloucester County Board of Supervisors supports the proposed variance to the seasonal open burning restrictions.

RESPONSE: Support for the proposal is appreciated.

No change has been made to the proposal as a result of this comment.

2. **SUBJECT**: Seasonal burning variance in Gloucester County.

COMMENTER: Berkshire Enterprises LTD

TEXT: Mr. Raymont Leiffer, owner of Berkshire Enterprises LTD, commented that the open burning ban variance will be helpful to the contractors in Gloucester. He feels that the open burning restrictions are a great impact on contractors, especially small businesses. Mr. Leiffer stated that no state money is currently available for loans to help the small businessman to find alternatives to the burning laws. Alternatives are very expensive. He'd like DEQ to look at other alternatives to limit impact on contractors in this particular business.

RESPONSE: Support for the proposal is appreciated.

No change has been made to the proposal as a result of this comment.

3. **SUBJECT**: Open burning ordinance in Isle of Wight County

COMMENTER: Isle of Wight County

TEXT: The Isle of Wight County Board of Supervisors requests that Isle of Wight County be excluded from the variance due to a local open burning ordinance being adopted in that jurisdiction.

RESPONSE: As requested, Isle of Wight has been removed from the proposed variance so that the open burning seasonal restrictions will be effective in 2007.